

Department of the Army, DoD

§ 518.99

Type	Cost
16mm roll film, per frame45
Paper daprnts (engineering drawings), each	1.50
Paper reprints of microfilm indices, each10

(3) Review time.

Type	Grade	Hourly rate (\$)
Clerical	E9/GS8 and below	13.25
(Minimum Charge).	8.30

Professional and Executive (To be established at actual hourly rate prior to review. A minimum charge will be established at 1/21 hourly rates.)

(d) Other technical data records. Charges for additional services not specifically provided in §518.96(c), consistent with DoD Instruction 7230.7 (reference (r)), shall be made by Components at the following rates:

1. Minimum charge for office copy (up to six images) \$3.50
2. Each additional image10
3. Each typewritten page 3.50
4. Certification and validation with seal, each 5.20
5. Hand-drawn plots and sketches, each hour or fraction thereof 12.00

Subpart G—Reports

REPORTS CONTROL

§ 518.97 General.

The reporting requirement outlined in this subpart is assigned Report Control Symbol DD-PA(A) 1365. See appendix F for DD Form 2564, Annual Report Freedom of Information Act.

ANNUAL REPORT

§ 518.98 Reporting time.

Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those times prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (reference(s)) AR 25-9. The standard data elements are contained in DoD Di-

rective 5000.12-M (reference (99)). The Army will follow guidelines below and submit the information to the Army Freedom of Information and Privacy Act Division, Information Systems Command, Attn: ASQNS-OP-F, Room 1146, Hoffman Building I, Alexandria, VA 22331-0301 by the second week of each January.

(a) Each reporting activity will submit the information requested in §518.99, items (a)(1), (a)(2), (a)(5), (a)(6), (b)(3), (i), (j)(1), (j)(2) and (j)(2)(i). Data will be collected throughout the year on DD Form 2086.

(b) Each IDA will submit the information requested in §518.99, excluding items (d) through (h).

(c) The Judge Advocate General, Army, will submit the information requested in §518.99, item (9).

(d) The Army General Counsel will submit the information requested in §518.99, items (d) through (f).

(e) The Information Systems Command will compile the data submitted in the Department of the Army's annual Reporting of Freedom of Information Processing Costs (RCS DD-PA(A) 1365). This report will be coordinated through the DISC4 (SAIS-PDC), WASH DC 20310-0107, to the Director of Freedom of Information and Security Review by 31 January each year.

§ 518.99 Annual report content.

The following instructions shall be used in preparing the annual report for submission on DD Form 2564 (see appendix G to this part). DD Form 2564 may be ordered through publication channels or reproduced locally:

(a) Item 1.

(1) *Total requests.* Enter the total number of FOIA requests responded to during the calendar year.

(2) *Granted in full.* Enter the total number of FOIA requests responded to and granted in full during the calendar year. (This may include requests granted by your office, yet still requiring action by another office).

(3) *Denied in part.* Enter the total number of FOIA requests responded to and denied in part based on one or more of the nine FOIA exemptions. (Do not report denial of fee waivers).

(4) *Denied in full.* Enter the total number of FOIA requests responded to

and denied in full based on one or more of the nine FOIA exceptions. (Do not report denial of fee waivers).

(5) *“Other Reason” responses.* Enter the total number of FOIA requests in which you were unable to provide all or part of the requested information based on an “Other Reason” response. Item (b)(3) of this section explains the six possible “Other Reasons”.

(6) *Total actions.* Enter the total number of FOIA actions taken during the calendar year. This number will be the sum of paragraphs (a)(2) through (a)(5) of this section.

(b) Item 2.

(1) *Exemptions invoked on initial determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (a)(3) and (a)(4) of this section.

(2) *b(3) Status invoked on initial determinations.* Identify the statutes cited and number of times invoked when you claim a (b)(3) exemption. The total number of instances will be equal to the total in paragraph (b)(1) of this section. Cite the specific sections when invoking the Atomic Energy of 1954 or the National Security Act of 1947. To qualify as a b(3) exemption, the statute must contain clear wording that the information covered will not be disclosed. The following examples are not b(3) statutes:

(i) 5 U.S.C. 552a—Privacy Act.

(ii) 17 U.S.C. 101 et. seq.—Copyright Act.

(iii) 18 U.S.C. 793—Gathering, Transmitting or Losing Defense Information.

(iv) 18 U.S.C. 794—Gathering or Delivering Defense Information to Aid Foreign Governments.

(v) 18 U.S.C. 1905—Trade Secrets Act.

(vi) U.S.C. 1498—Patent and Copyright Cases.

(3) *“Other Reasons” cited on initial determinations.* Identify the “Other Reasons” response cited when responding to a FOIA request and enter the number of times each was claimed.

(i) *Transferred request.* Enter the number of times a request was transferred to another DoD Component or Federal Agency for action.

(ii) *Lack of records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligations to create a record.

(iii) *Failure of requester to reasonably describe record.* Enter the number of times a FOIA request could not be acted upon since the requester failed to reasonably describe the record(s) being sought.

(iv) *Other failures by requester to comply with published rules and/or directives.* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(v) *Request withdrawn by requester.* Enter the number of times a requester withdrew a request and/or appeal.

(vi) *Not an agency record.* Enter the number of times a requester was provided a request indicating the requested information was not an agency record.

(vii) *Total.* Enter the sum of paragraphs (b)(3) (i) through (vi) of this section. This number will be equal to or greater than the number in paragraph (a)(5) of this section, since more than one reason may be claimed for each “Other Reason” response.

(c) Item 3.

Initial denial authorities by participation. Enter the name, rank (if military), title, and activity of each individual who signed a partial or total denial response and give the number of instances of participation. The total number of instances will equal the sum of paragraphs (a)(3) and (a)(4) of this section. Show the individual’s full title and complete organization (do not use acronyms or abbreviations, other than U.S.) See example below.

Smith, John G. BG Director, Personnel and Administration, 6 U.S. European Command

(d) Item 4.

(1) *Total requests.* Enter the total number of FOIA appeals responded to during the calendar year.

(2) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(3) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the nine FOIA exemptions.

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(4) *Denied in full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the nine FOIA requests.

(5) *"Other Reason" responses.* Enter the total number of FOIA appeals in which you were unable to provide the requested information based on "Other Reason" response. Item (b)(3) of this section explains the six possible "Other Reasons."

(6) *Total actions.* Enter the total number of FOIA appeal actions taken during the calendar year. This number will be the sum of paragraphs (d)(2) and (d)(5) of this section.

(e) Item 5.

(1) *Exemptions invoked on appeal determinations.* Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (d)(3) and (d)(4) of this section.

(2) *b(3) Statutes invoked on appeal determinations.* Identify the statutes cited and number of times invoked when you claimed a(b)(3) exemption. The total number of instances will be equal to the total in paragraph (e)(1) of this section. Cite the specific sections when invoking the Atomic Energy Act of 1954 or the National Security Act of 1947. To qualify as a b(3) exemption, the statute must contain clear wording that the information covered will not be disclosed. Examples which are not b(3) statutes are listed in paragraph (b)(2) of this section.

(3) *"Other Reasons" cited on appeal determinations.* Identify the "Other Reasons" response cited when responding to a FOIA appeal and enter the number of times each was claimed. See paragraph (b)(3) of this section for description of "Other Reasons".

(f) Item 6.

Appeal denial authorities by participation. Enter the name, rank (if military), title, and activity of each individual who signed a partial or total appeal denial response and give the number of instances of participation. The total number of instances will equal the sum of paragraphs (d)(3) and (d)(4) of this section. Show the full title and complete organization (do not use acro-

nyms or abbreviations, other than U.S.). See Item 3 of this section for example.

(g) Item 7.

Court opinions and actions taken. Briefly describe the results of each suit the Judge Advocate General and/or the General Counsel participated in during the calendar year. See following example:

Armed Forces Relief and Benefit Association v. Department of Defense, Department of the Army, Department of the Air Force, and Department of the Navy. C.A. 89-0689, U.S.D.C.D.C., March 15, 1989. Plaintiff filed suit for defendant's refusal to release serviceman's name and duty address. Information was held pursuant to 5 U.S.C. 552 (b)(2) and (b)(6). Plaintiff voluntarily dismissed suit June 19, 1989.

(h) Item 8.

FOIA implementation rules and regulations. List all changes or revisions of FOIA rules or regulations affecting the implementation of the FOIA program, followed by the FEDERAL REGISTER reference (volume number, date, and page) that announces the change of revision to the public. Append a copy of each. See following example:

DoD Regulation 5400.7-R "DoD Freedom of Information Act Program"—32 CFR 286, Vol. 54, No. 155, pg. 33190, 14 August 1989.

(i) Item 9.

Fee collected from the public. Enter the total amount of fees collected from the public during the calendar year. This includes search, review, and reproduction costs only.

(j) Item 10.

(1) *Availability of records.* Reports all new categories or segregable positions of records now being released upon request.

(2) *FOI Program costs.*

(i) *Personnel costs.* Items (b) and (c) of this section are used to capture many years and salary costs of personnel primarily involved in planning, program management and/or administrative handling of FOIA requests. Determine salaries for military personnel by using the Composite Standard Pay rates (DoD 7229.9-M, Department of Defense Accounting Manual). For civilian personnel use Office of Personnel Management salary table and add 16 percent for benefits. A sample computation is shown as follows. Table G-1

shows how the cost computation is made.

TABLE G-1—SAMPLE COMPUTATION

Grade	No. of personnel	Salary	Percentage of time	Costs
O-5	1	\$88,463	10	\$8,846
O-1	1	37,219	30	11,165
GS-12	1	41,557	50	20,799
Total	90	40,790

Notes:

1. To determine the manyear computation: Add the total percentages of time and divide the percentage by 100.

2. Sample Computation: Manyears=140% divided by 100=1.4 manyears.

(a) *Estimated manyears*. Add the total percentages of time for personnel involved in administering the FOIA program and divide by 100. In the example shown above, (10+30+50)/100=.9 manyears.

(b) *Manyear costs*. Total costs associated with salaries of individuals involved in administering FOIA program. In the example shown above, the total cost is \$40,790.

(c) *Estimated manhour costs by Category*. This section accounts for all other personnel not reported in (a) and (b) of this section who are involved in processing FOIA requests. Enter the total hourly cost for each of the five areas described below.

(1) *Search time*. This includes only those direct costs associated with the time spent looking for material that is responsive to a request, including line by line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(2) *Review and existing*. This includes all direct costs incurred during the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld. It also includes excising document to prepare them for release. It does not include time spent resolving general legal or policy issues regarding the applications of exemptions.

(3) *Coordination and approval*. This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(4) *Correspondence/form preparation*. This includes all costs involved in typing responses, filling out forms, etc., to respond to a FOIA request.

(5) *Other activities*. This includes all other processing costs not covered above, such as processing time by the mail room.

(6) *Total*. Enter the sum of (c)(1) through (c)(5) of this section.

(d) *Overhead*. This is the cost of supervision, space, and administrative support. It

is computed as 25% of the sum of (b) and (c) of this section.

(e) *Total*. (1) Enter the sum of (b), (c), and (d) of this section.

(2) *Other case-related costs*. Using the fee schedule, enter the total amounts incurred in each of the areas below.

(i) *Computer search time*. This includes costs of central processing unit, input/output devices, memory, etc., of the computer system used, as well as the wage of the machine's operator/programmer.

(ii) *Office copy reproduction*. This includes the cost of reproducing normal documents with office copying equipment.

(iii) *Microfiche reproduction*. This includes the cost of reproducing normal documents with office copying equipment.

(iv) *Printed records*. This is the cost of providing reproduced copies of forms, publications, or reports.

(v) *Computer copy*. This is the actual cost of duplicating magnetic tapes, floppy diskettes, computer printouts, etc.

(vi) *Audiovisual materials*. This is the actual cost of duplicating audio or video tapes or like materials, to include the wage of the person doing the work.

(vii) *Other*. Reports all other costs which are easily identifiable, such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(viii) *Subtotal*. Enter the sum of (e)(2)(i) through (vii) of this section.

(ix) *Overhead*. This is the cost of supervision, space and administrative support. It is computed as 25% of (e)(2)(viii) of this section.

(x) *Total*. Enter the sum of (e)(2)(viii) and (ix) of this section.

(3) *Cost of routing requests processed*. This item optional. Some reporting activities may find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. Care should be exercised so that costs are comprehensive to include a 25% overhead, yet not duplicated elsewhere in the report. Multiply the number of routine requests processed items the cost factor to compute this amount.

(4) *Total costs*. Enter the sum of (1) through (3) of this section.

(f) *Format time limit extension*. Enter the total number of instances in which it was necessary to seek a formal 10 working day time extension for one of the reasons explained as follows:

(1) *Location*. The need to search for and collect the requested records from another activity that as separate from the office processing the request.

(2) *Volume*. the need to search for, collect, and appropriately examine a voluminous

amount of separate and distinct records in a single request.

(3) *Consultation.* The need for consultation with another agency having a substantial interest in the material requested.

(4) *Court involvement.* Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptional circumstances, provide a copy of each court opinion and court order containing such an extension of time.

(5) *Total.* Enter the sum of paragraphs (j)(2)(i) through (j)(2)(iv) above of this section.

(ii) [Reserved]

[56 FR 48932, Sept. 26, 1991, as amended at 56 FR 56011, Oct. 31, 1991]

Subpart H—Education and Training

RESPONSIBILITY AND PURPOSE

§ 518.100 Responsibility.

The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOIA requests, and should provide a thorough understanding of the procedures outlined in this Regulation.

§ 518.101 Purpose.

The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

§ 518.102 Scope and principles.

Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon

their degree of involvement in the implementation of this Regulation. The Program should be designed to accomplish the following objectives:

(a) Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

(b) Instruct personnel, who act in FOIA matters, concerning the provisions of this Regulation, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(c) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(d) Advise personnel of the penalties for noncompliance with the FOIA.

§ 518.103 Implementation.

To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD(PA).

§ 518.104 Uniformity of legal interpretation.

In accordance with DoD Directive 5400.7 (reference (b)), the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program. This regulation provides procedures for contacting the DOD General Counsel where required.

APPENDIX A TO PART 518—UNIFIED COMMANDS—PROCESSING PROCEDURES FOR FOI APPEALS

1. General.

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Programs. This policy represents an exception to the policies in DoD Directive 5100.3 (reference (f)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and DoD Instruction 5400.10 (reference (hh)) and to forward directly to the OASD(PA) all correspondence